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Justice and Peace after war:

Conceptual Difficulties in the discourses of Transition
and Reform

Laury Lawrence Ocen

PhD. Fellow

Makerere Institute of Social Research

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The main objective of this policy brief is to explain conceptual lapses in the discourses of transition in post-war societies. Critical, is the fluidity that characterizes notions of survivor and victim in the context of peace and justice. Because of this, transitional interventions continuously create victims of war in their attempt to create survivors of war. I argue that legal inclusiveness is capable of creating a rule of law that facilitates implementation processes of integration, settlement, and reconstruction of post-war societies. Creating “survivability” is a collective work of surviving communities, national, local, and other exogenous entities. The way memory of war is constructed in transitional period stems from how international agencies, national governments, civil societies, non-governmental organizations, and local actors deploy human and material resources in servicing of peace, justice and other transitional concepts.

There are areas that demand proactive policy interventions to effectively facilitate transition from war to peace. Justice is the number one requirement for peace. There can never be peace without justice. Once former belligerents, victims, and survivors get justice through consensual processes of compensation, reparation, truth telling, reconciliation, and “punishment”, peace is established. This paves way for interventions like educational reforms, legal inclusivity, community rehabilitation, and market regulations required in surviving communities.

Political settlement creates survivors of war; criminal settlement creates victims of war. The role of democracy in post-war transition negotiates accountability for past wrongs. Because there are risks of backward lashes of transition from state of war to anarchy, or from war to another form of war, democratic processes are vital in transition. For reintegration of ex-combatants, formerly abducted persons, and reform of perpetrators, democracy should not be a universal concept. Instead, it should be contextually appropriated according to specific experiences. In the matter of post-war settlement, it should be understood as inclusion of survivors' voices, to create better economies of public expression in a transitional period. It is very difficult to state when transition ends. Hypothetically it ends when all politically significant groups have embraced the rule of law. Belligerents embrace the rule of law if conflicts are settled on a win-win situation. Aggrieved persons embrace the rule of law if all conflicting parties can count both their gains and losses in the war, or feel that they have been given space to account for the war and its aftermath.

To examine legal phenomena in transition along a "transformative continuum", there is need to shape transitional processes in a manner that turns victims of war into survivors of war. Political justice is a preferred option because it enables the state to appropriate effective "rule of law". Application of the rule of law in criminal justice is rigid, fixed, universal, and state-centered. In political justice systems, there is room to re-contextualize, re-situate, liberalize, or even translocate the rule of law for purposes of justice to ex-combatants who had been using a different system of law. In the case of ex-combatants liberalizing the rule of law facilitates integration into civilian life when some laws used by rebels are accommodated during post-conflict settlements. It is assumed that liberalized rule of law helps them to adjust from war to peace. It regulates social behavior of war parties in post conflict communities.

Political settlement offers democratic spaces that empower survivors to question the role of national armies in mass violence. In northern Uganda, criminal justice has tended to fix the Lords Resistance Army (LRA) as the guilty party, while fronting the Uganda Peoples Defense Forces (UPDF) as the liberating army. Political justice is instrumentalized by reparation, truth telling, open accountability, and reconciliation because it

offers platforms that shape early warning and conflict resolution systems that ward off war before it occurs. Criminal settlement is state centered and elitist, often sidelining local participation of survivors and victims in the transitional period. Good laws help transform victims of war into survivors, capable of adjusting to the rule of law through processes of reparations, compensations, re-education and re-skilling. Political justice is then, a function of a political society that takes collective responsibility of neutralizing the hazards of war. Unlike criminal justice, it veers from a one-dimensional apportionment of blame. Because of this, political settlement enhances efforts towards ensuring normative shifts in both war returnees and receiving communities that are likely to be abhorrent to reintegration. This type of justice thinks both inside and outside conventional legalities and statist phenomenon of law. Exploring ways in which modern laws facilitate, rather than polarize reintegration of all fighting factions is an important necessity.

There is need for a new paradigm of reading and interpreting laws that govern rebels in the bush to construct practical possibilities of administering a workable rule of law. As Ruti Teitel has argued, tensions often exist between the rule of law and processes of transition. As post war societies transit, the rule of law also has to transit, meaning that it has to be flexible with political and sociological demands of a society seeking its bearing from violence to non-violence. The rule of law flourishes in a democratic space that is flexible enough for former agents of anarchistic communities to adjust to juridical cultures. Teitel has explained that this is the tension between “predecessor” and “successor” justice systems. War returnees would be reintegrated into a political dispensation in which the rule of law is supreme, yet they bring back with them cultures and traditions shaped by a different “rule of law”. In the bush, rebels do not operate without laws. They are governed by an anarchistic version of rule of law operating in a non-political society. In that jurisdiction they administer punishments, reparations, and reprieve. In “predecessor system of law, methods such as indoctrination, ritual conditioning, threats, compulsion, and killing are often used to reorient captives and recreate them into new personalities that sacralize violence. The dilemma of transition is to determine how all these may be uprooted or destabilized in a transitional process where conventional rule of law is in force. This affects the “transitionality of vic-

tims”, most especially those abducted and subjected to weird practices for a long time. Such victims form characters very difficult to dispense with. Their transitionality can only be managed in a democratic political dispensation that includes traditional or what is called alternative justice processes.

“Return” has also featured strongly in transition and resettlement discourses in post-war communities. Return has tended to exclude much more than it includes. In many cases, after the guns have gone silent, government facilitates survivors to return to homes from which they had been displaced. In the case of northern Uganda, more than one million people displaced in Acholi, Lango, and some parts of Teso in eastern Uganda were finally “returned” from 2005 to 2006. Major facilitators of “return” and “resettlement” are national governments, humanitarian agencies, and non-governmental organizations. Return is conceptually intertwined with justice. It is a stage in the process of transition. Literarily, return means somebody or a group of persons are leaving abode of displacement or exile to get back to a place they used to know as home. Effective return means that as people go back home they are less awed by loss and deprivation.

Return may be conceptualized as part of transitional process synonymous with justice to “returned” communities. In transitional period, return means more than going back home, yet its current reality indicates that there are a number of omissions and assumptions that obviate its logic. You do not return to life those who died in displaced camps or in exile. You can only return their remains. You do not return time wasted, cultures impaired, and opportunities lost in the period of war. You can only repair the wreckage of time and of culture by mitigating poverty, disease, and cultural degeneration. You can revamp things that have been lost but you cannot do it with the exactitude that the concept of “return” assumes. There is need to filter specific dossiers in the concept of return. For instance, policy focus should address practices that are transplanted from host communities, by returnees, yet are detrimental to the history of returned communities. Policy makers should reflect on pre-war times, to take stock of material, spiritual, and other vital economies of that community. There is need to examine cultural influences of host homes and see

what returning communities are tempted to take back, to see whether taking back such packages constitute a just “return”. In the case of displaced camps in northern Uganda, there are things learnt in protected villages (host communities) that returned people should unlearn for a just return.

The above argument can be linked to cases of refugee diasporas that followed upheavals in Afghanistan, Palestine and Sri Lanka since the 1970s. Following fighting between the Muhajedin and the Kabul regime supported by the former Soviet Union, millions of refugee Diasporas moved to the neighbouring countries of Pakistan and Iran. The Soviet backed regime fell in 1992 paving way to the Taliban regime made up of refugee population in Pakistan from 1996 to 2001. Some Afghans returned, but up to 2.5 million remained in Iran and Pakistan until the overthrow of the Taliban. In displacement, asylum and exile, there are often transnational relations created. Such relations explain connections between the homeland (place of origin), neighbouring country (country of first asylum), and “countries of asylum further afield”. In these connections there are movements of money, information, and values. Displaced camps have no rigidly tight boundaries. There are small movements of people between host countries, first asylum countries, and asylum countries further afield. This phenomenon explicates expanded discourses of return. When refugees repatriate money, they do not send labour and skills they used for making such monies. When they return physically they take with them such skills. Such skills are however, constructed and padded by cultural standards of host countries. How fair this is, depends on whether new mindsets of returnees present cultural shocks or sociological support. Culture shock refers to mannerisms that are socially repugnant to home norms. In that context protection in northern Uganda has featured as “humiliation”, arising from the moral consequences of parents sharing dingy rooms with their children in “protected villages”. The assumption is that the return discourse surmises de-assimilation of unwanted learnt practices from host communities that would undermine the effectuality of return. It extirpates cultures of war that are not commensurate with transitional justice culture.

When we consider “return” we are also mindful of security of returning communities. Northern Uganda is a tricky context, considering land

mines that were planted by the LRA rebels in trading centers, villages, roads, schools, markets and gardens. Critical, is how to return people to villages in which their lives are threatened with multiple dangers. “Return” as part of transition is “just” when returnees are equipped with necessary political, civic, and military education to survive in a returned community that is not yet safe. Return is peaceful and just if victims of post-war violence are helped to overcome disabilities by giving them opportunities of healing and restoration. In February 22nd 2015, Adina Foundation Uganda, a local NGO in Lira organized a “Run to Walk” marathon in which participants, civil societies, corporate bodies, and business communities contributed money to enable children disabled by war, accidents, and congenital defects, to “walk again” in order to unlock their potentials.

In Lango and Teso regions (heavily affected by the LRA war) transitional focus has emphasized restocking. Restocking as a way of replenishing live-stock economy has obvious challenges. The policy assumes that people of northern Uganda were exclusively cattle keepers. Return, by supplying ox ploughs, did not go far because not every part of northern Uganda cultivate with ox-ploughs. Moreover, houses and vehicles burnt or destroyed have not been compensated.

Resilience is a quality that is “ideal” for survivors. Because war and its different transitional processes produce political subjectivities in different magnitudes, aid agencies, local actors, and state agencies often devote their resources toward equipping survivors for a life beyond war. Resilience refers to “ability to avoid suffering significant adverse effects” of a hostile or devastating experience. It is how victims survive in a state of adversity. Resilience is not a political claim that necessitates an affirmative “survivability instinct” that does not place emphasis on the political. Instead resilience thrives on liberalism, which unfortunately produces its own violence. Resilience as a transitional requirement for returnees explains how a survivor is different from a victim.

First, “survivability” is a potential that enables the experiencer of adversity to live beyond his violent experiences. That potential means the “action” that a survivor puts toward regenerating himself. A survivor then, is a person whose mechanics of memory of adversity, such as retrospec-

tion, memoirs, commemoration and other forms of remembrance, translate into innovations that transform transition. In that context a survivor is not a dormant recipient of donations, alms, and handouts, but someone with a proven capacity to adapt and thrive in the face of suffering. He is not simply a person who has escaped death, violence, or life hazards. He does not simply survive death in a war situation and then fails to survive trauma and other secondary effects of war. He generates inspiration that enables him to live beyond war. He must survive several things, including the spirit, will power and creative ability to reproduce life decimated by adversity. He carries into a post-war period learnt lessons, skills, dexterity, and virtuosity that enhance personal and community livelihoods. A survivor is a participant in the collective works of “re-membling” his community.

In his novel *Matigari* (1987), Ngugi wa Thiongo’ presents the heroic Matigari, returning with his gun and sword, which he secretly buries in a bush, before beginning on his journey to look for truth and justice. Survivability, in that context, has a tripartite face: return, retention, and forgetting. There are things that a survivor should retain and there are things that he must forget. Matigari buries his gun and sword, yet he still has the will to fight, in search of truth and justice. In that beautiful novel, Matigari says, “It’s good that I have now laid down my arms...I have now girded myself with a belt of peace. I shall go back to my house and rebuild my home”. After saying this, “He crossed the river and came out of the forest”. A survivor returns home, but with something he has retained to facilitate a process of regeneration or resettlement. He must indeed come out of the forest of violence, hatred, trauma and all the putridness of war. A victim does not possess those attributes. Because he is almost irreversibly incapacitated socially, morally, and mentally, he benefits from efforts of survivors and other aid actors.

Patients of nodding disease syndrome in northern Uganda are typical examples of victims. As Hillary Onek, the then Minister for Relief, Disaster Preparedness and Refugees stated, “daycare centers should be set for children with nodding diseases to enable their parents engage in income generating activities” (New Vision, Monday May 11 2015). Onek said that the syndrome is complex; because parents must trail the children every-

where they go because many of them, left unguarded, are known to have drowned in rivers. There are over 3000 child victims of nodding disease in the northern districts of Pader, Agago, Lamwo and Kitgum. Nodding disease children can however be turned into survivors if critical research is done to battle this endemic in northern Uganda. Aid should go beyond daycare centers and tones of food that the Adventist Development Relief Agency (ADRA) donated for nodding disease victims. Such aid is never transitory. At best it is palliative. The disease that causes multiple injuries (head nodding and convulsions), also traumatize families of victims. Minister Oniek surprisingly said that Uganda's ministry of health had not budgeted any funds towards containing the syndrome. If these children must become survivors of war, they must come out of their physical and mental afflictions, and be able to at least partially live on their own, rather than depend totally on their parents. They must develop resilience worthy of a true survivor. Ministry of health must undertake serious curative research. The children must be cured and sent back to school.

Scholars of post-war transition should analyze survivors and their modes of survivability according to specific historical conditions and post-war experiences. Efficacy of "survivability" depends on political liberalism and not market liberalism. As pointed out earlier, survivability comes with the input that the war living dispenses in memory of the war dead. Such potentials thrive in a certain political and social landscape. Effective transitional mechanisms provide enabling conditions that make it possible for human potentials to thrive—such as opening up roads, markets, social infrastructures and the like. It is not possible for survivors to achieve some of these on their own. In northern Uganda majority of people live the lives of victims and not of survivors. Their personal and collective narratives are typically sad stories of neglect, total deprivation, pessimism, and a yearning for what the government can do to better their living conditions. Survivability is featuring in places where NGOs have mobilized communities into development and rehabilitation activities. However, in a few places like the village of Gulgoi in Abia, local boys and girls, without external funding have initiated brick works at the clay mine of Gulgoi. In the past Gulgoi has been the capital of pottery and other clay arts in northern Uganda. It was here that Okot Odiambo, one of the LRA's most notorious commanders indicted by the ICC camped with his fighters for

several months and launched at least three rounds of massacres in 2004. In addition to a flourishing pottery, brickwork and sand mining are flourishing in Gulgoi.

Survivability and resilience are closely associated with ecology. Transitional mechanism should enhance protection of eco-systems threatened with decimation due to upsurge of capital into former war zones. Justice is that process that allows survivors to exploit these resources to recuperate from the consequences of war. There is a worrying reality in many parts of northern Uganda, where local capitalists and entrepreneurs continue to exploit resources like sand and stone quarries, charcoal burning, and gems extraction. These are resources, which survivors could exploit toward their much-needed recovery. During transition by-laws and other regulatory systems that protect ecological heritage of surviving communities should be put in place. Free market does not offer productive space for surviving communities to regenerate their economic vitality. Market liberalism ensures that survivors are outcompeted by capitalists and entrepreneurs that maraud war ravaged areas to exploit local resources and heritage. It regulation, not liberalism, that checks economic threats to surviving communities.

In Abia in Alebtong district, I observed that local cultural troupes such as Abwoc Yie Kec group have been variously engaged by NGOs, state agencies, local governments in the production of songs, drama, dance and other cultural activities. At commemorations, anniversaries, festivals, parties, and other ceremonies they are called to perform. There is not much that such groups gain from their wonderful performances, even when they sometimes trek hundreds of miles. In such areas, interventions to protect surviving communities from different forms of exploitation and usurpation are needed. Cultural performance groups in transitional communities could be equipped with capacities that enable them demand worthy professional fees for their performances. An impotent man is bitter (abwoc yie kec) if post-war transitional processes take unfair advantage of his economic, political, and social impotencies by exploiting his talents, taking advantage of his turbulent history and exploiting his voicelessness. Sen Amartya in his book *Development as Freedom* would disagree with this argument. The role of markets, according to Amartya,

is central in development process. Our argument is that the amount of market freedom necessary in transitional communities should be regulated. Intervention in markets by powerful agencies should not harm the interests of small entrepreneurs. Sheltering of domestic industries from aggressive competition is the state's role. Rural dwellers' capacities to exploit available alternatives, once boosted by protectionist interventions, is capable of facilitating recovery. Amartya has argued that free market mechanism enhances economic growth, but such freedom could be to the detriment of survivors' struggle to revitalize their plundered economies if it is not regulated. Adam Smith was one of the earlier proponents of freedom of exchange as basic to the liberties of people. Survivors of war can never benefit from such freedoms. Survivors of war need protectionist measures to safeguard their fragile economies recuperating from the detriments of war. Free, unregulated markets in this context would only contribute to new wars between survivors and others if free market monopolizes allocation of resources. How market is understood in transitional period is what I emphasize. Reproducing capitalism might not help survivors transit productively to a post-war recovery. Karl Marx said that in replicating the history of advanced capitalist Europe, the less developed does so under harsher and retrograde conditions. If market is an economic space in which people buy and sell goods and services, then it is not only freedom which is a core value of market mechanism, but also fairness. Market liberalism is the option for more developed economies, not the less developed. Freedom is the language of industrial development. No capitalist mode of production is fair in survivors' communities. To a large extent, war has its own principles of economics and modes of distribution. War is a multidirectional service industry in which different categories offer or even sell services that directly or indirectly contribute to war efforts. The media, humanitarian agencies, spiritual bodies, producers, consumers all have stakes in war. That is the sense in which absolute freedom in the allocation of resources only benefits capitalists, not survivors.

Recommendations

- a. Ordinary people should be involved in defining what is meant by peace, justice, survivor, government, etc. the views they provide can guide transitional interventions by government and other aid actors. While doing scientific research on things like nodding disease, local herbalists can also be engaged.
- b. After conventional wars, there are hidden wars manifesting as land wrangles, trauma, disease, moral decay that policy makers and interventionists must address. Policy actors should treat these as seeds of future wars once they are not addressed. Interventions should focus on health, education, entrepreneurship, and legal sectors to minimize these threats to peace.
- c. War is not necessarily a one-dimensional experience of tragedy and loss. War is also opportunity and gain for some. To avoid double jeopardy or double gain, survivors should not be taken as a universal category. A clear distinction between survivors and victims should be determined, to see how victims could be transformed into survivors in transitional period.
- d. Survivors of war should be the vital beneficiaries of post-war interventions in a manner that rebuilds peace, but at the same time restores justice. Regulatory mechanisms that protect capitalistic expropriation of resources in surviving communities should be put in place by supporting community by-laws, and local government ordinances. While ensuring freedom of economic activities in surviving communities, measures should be taken to ensure that such freedom benefits survivors more, by regulating markets to boost their production and marketing potentials. Free, unregulated market tends to benefit capital only.
- e. Reform of post-war curriculum would be in position to facilitate restitution of justice and peace. Educational reform can play significant role in post war recovery. I propose that post war communities need their own curriculum, particularly in the vocational and technical schools coming up in post-war communities.

- f. Legal inclusivity and alternative justice practices are useful benchmarks in negotiating relations between different categories of survivors on the one hand, and perpetrators and victims on the other. Legal inclusivity that I suggest encompasses consideration of laws that governed rebels while they were still in the bush. Irrespective of whatever laws used to “try” them, some laws and systems that governed their operations in the bush should be applied, to see whether in applying those laws and systems, the rebels operated outside the norm when they perpetrated certain atrocities.
- g. While designing policies in returned communities, the history, culture, and preferences of survivors should be taken into consideration. You cannot distribute seeds, or ox-ploughs that survivors will be reluctant to use because it is ahistorical to their memories and cultures.

List of Policy Brief

1. Professor Mahmood Mamdani, *Beyond Nuremberg: Learning from the Post-Apartheid Transition in South Africa*, October 2015
2. Akoko Akech - PhD. Fellow, *Kenya's Constitution and Institutional Reforms after Political Violence 1991-2010*, October 2015
3. Haydee Bangerezako - PhD. Fellow, *Politics of indigeneity: Land restitution in Burundi*, October 2015
4. Laury Lawrence Ocen - PhD. Fellow, *Justice and Peace after war: Conceptual Difficulties in the discourses of Transition and Reform*, October 2015
5. Esibo S. Omaada - PhD. Fellow, *What is Kenya Becoming: Dealing with Mass Violence in the Rift Valley of Kenya*, October 2015
6. Professor Mahmood Mamdani, *The Land Question and Customary Tenure: Some Preliminary Policy Recommendations*, October 2015
7. Dr. Giuliano Martiniello - Research Fellow, *Policy Paper – Large Scale Land Acquisitions*, October 2015
8. Dr. Pamela Khanakwa - Research Associate, *National Policies and Inter-District Territorial Boundary Conflicts: Lessons from the Bugisu-Bugwere Dispute over Namatala Wetland*, October 2015



MAKERERE INSTITUTE OF SOCIAL RESEARCH

MAKERERE UNIVERSITY,

P. O. BOX 16022

KAMPALA

UGANDA

TEL: +256-414-532-838 | +256-414554-582 | +256-312-132-100 (FRONT DESK)

EMAIL: director@misr.mak.ac.ug WEBSITE: <http://misr.mak.ac.ug>